IN THE COURT OF APPEALS OF IOWA

No. 2-428 / 11-1055
Filed July 11, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER D. JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Daniel P. Wilson, Judge.

Defendant appeals his conviction for first-degree murder asserting his counsel rendered ineffective assistance and his conviction is not supported by sufficient evidence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Lisa Holl, County Attorney, and Laura Roan and Daniel Burstein, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

VOGEL, P.J.

Defendant, Christopher Johnson, appeals his conviction for murder in the first degree, in violation of Iowa Code § 707.2(1) (2009), asserting his trial counsel rendered ineffective assistance in failing to object and move for a mistrial when a State's witness testified regarding an ultimate issue to be decided by a jury. Johnson also asserts there was insufficient evidence to support the verdict with respect to the element of premeditation. For the reasons stated below, we affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

From the evidence produced at trial, the jury could reasonably have found the following facts. At around 6:00 p.m. on June 27, 2010, Johnson stabbed his wife, Anessa Johnson, six times, killing her in their home in Ottumwa. The couple's family and friends knew the couple had a volatile relationship. They had been married for approximately five years, but Johnson would often stay with his mother when Anessa would kick him out of the house. The Friday before the murder, a friend of Johnson's offered to allow him to stay at his house over the weekend as he knew the couple was having marital issues. Another friend remembered Johnson saying, "Somebody is just going to find her dead"; "I'm going to end up in prison"; and "You're going to have to come see me behind bars." The friend remembered Johnson making these statements once or twice a week in the month before the murder.

After stabbing his wife, Johnson drove his wife's car to his brother's house, where he admitted something bad had happened and he needed to leave. He apologized to his brother and his brother's girlfriend for everything bad

he had ever done and left. Anessa's parents were able to gain entry into the home, after being alerted to a problem by Johnson's family, and found Anessa lying on the floor of the living room, bloody and almost completely unclothed. The family attempted to perform CPR, but their efforts were not successful. At trial the medical examiner testified Anessa had two small stab wounds to the face and four stab wounds to the abdomen. Three of the four stab wounds in the abdomen would have been fatal independent of the other wounds. Anessa did not have any defensive wounds, indicating she was either not aware of the attack or did not resist it. She also had abrasions on her neck and petechiae[1] in her left eye, indicating to the medical examiner she may have been strangled. The medical examiner did admit the petechiae can occur from chest compressions, but this would not explain the abrasions to the neck nor the lack of defensive wounds.

While the police were investigating the murder, Johnson was driving around contacting a number of family and friends using his cell phone. He also spoke with police. He admitted to several people that he had stabbed his wife and that she was dead, but he gave various accounts surrounding the killing. He explained to a few people that he and Anessa were having an argument over finances, and some people were told the argument was about Anessa's drinking. Johnson told others that they were having sex and another man's name came up. Johnson also said that he blacked out, and when he came to, he pulled the

[1] The medical examiner testified petechiae are small pinpoint hemorrhages, found in this case inside the eyelid of the left eye. Petechiae in the eye are caused from pressure on the neck or chest which prevents blood flow from leaving the head. The small blood vessels in the eye essential burst from the added pressure.

knife out of Anessa and begged her not to leave him. He also stated to one person he watched Anessa take her last breath. He told someone else Anessa had backed him into a corner, was beating him, and he snapped, stabbing her after he found a knife near him.

During most of the conversations, Johnson gave indications that he was suicidal, making statements indicating he would be with Anessa by the end of the night. The police were able to locate Johnson while he was on the road. Johnson was eventually involved in a single-vehicle crash and taken to University Hospitals in Iowa City.

The State filed a trial information against Johnson on August 11, 2010. The case proceeded to trial May 3, 2011, and the jury found him guilty of first-degree murder. Johnson was sentenced to life in prison without the possibility of parole on June 27, 2010, and now appeals his conviction.[2]

II. INEFFECTIVE ASSISTANCE OF COUNSEL.

In his first claim on appeal, Johnson asserts his trial counsel rendered ineffective assistance when he failed to move for a mistrial and failed to object to Detective Steve Harris's trial testimony regarding whether Johnson had a plan or intent to kill his wife.

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[2] During the pendency of the appeal after the final briefs had been filed, the State was made aware of and turned over additional photographic and video evidence to Johnson's appellate counsel, which allegedly had not been turned over before trial. Johnson's attorney made a motion for a limited remand so that the district court could appoint counsel to investigate whether a motion for a new trial should be filed based on this new evidence. The State resisted the motion for a limited remand asserting the new evidence was cumulative to the evidence that had been produced and did not warrant a motion for a new trial. We now deny the motion for a limited remand as we do not find the remand is necessary to resolve the issues currently on appeal. We are aware that the deadline for filing a motion for a new trial based on newly discovered evidence is two years after the final judgment. *See* Iowa R. Crim. P. 2.24(2)(b)(8). If Johnson still believes a motion for new trial is warranted, he may proceed accordingly.

During defense counsel's cross-examination of Harris, counsel asked, "Okay. Now, from what you can tell, there was no real plan here, was there?" To which Harris responded, "I believe it was a plan." Defense counsel sought to impeach Harris with his deposition testimony where Harris stated, "It doesn't appear that it was something that could have been planned out in, you know, days in advance as far as formulated plan of action." After being confronted with his deposition testimony, Harris asked if he could explain his answer as he was being very specific in his deposition, but defense counsel responded, "Okay. And as to the plan, at the very least, we can agree he didn't plan this for more than a few days; right?" To which Harris responded, "Right."

During re-direct, the prosecutor sought to follow up on this line of questioning asking,

> Q. [Defense counsel] had asked you about whether you thought that he had a plan, and you said, not more than—at least not more than a few days beforehand? A. Yes.
> Q. So it's your opinion, based on your investigation, that he, he did intend to kill his wife? A. Yes.

Defense counsel objected and a bench conference was held. The prosecution withdrew the question, and the court admonished the jury to disregard the last question and answer. The prosecutor then asked Harris, "Detective, based on the cross-examination by [defense counsel], you had mentioned in response to his question that you believe he had a plan to kill his wife?" Harris responded, "Yes." Defense counsel made no objection to this question.

Johnson asserts counsel should have moved for a mistrial when Harris testified that he believed Johnson intended to kill his wife. He also claims counsel should have objected again and asked for a mistrial when the prosecutor

followed up after the initial objection by asking whether Harris believed Johnson "had a plan to kill his wife." Johnson asserts this testimony was improper opinion testimony on an ultimate issue to be decided by the jury: whether Johnson intended to kill his wife, which encompasses an element of first-degree murder. Johnson claims Harris essentially told the jury he was guilty of first-degree murder, and whether it was called a plan or intent, the significance to the jury was the same.

To prove a claim for ineffective assistance of counsel, Johnson must demonstrate (1) his trial counsel failed to perform an essential duty, and (2) prejudice resulted. *See Anfinson v. State*, 758 N.W.2d 496, 499 (Iowa 2008). If either element is not met, the claim will fail. *Id.* To demonstrate prejudice, Johnson must show that "but for the counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. We review ineffective-assistance-of-counsel claims de novo, independently evaluating the issue based on the totality of the circumstances. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998). Ineffective-assistance-of-counsel claims are normally preserved for postconviction relief proceedings in order to develop a more complete record. *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003). However, this court may address the claim on direct appeal if the record is adequate. *State v. Fountain*, 786 N.W.2d 260, 263 (Iowa 2010). We find the record adequate in this case to address this claim.

We begin by noting the issue of whether Johnson had a plan to kill his wife was first broached by defense counsel on cross-examination. Johnson does not claim his counsel was ineffective in introducing this line of questioning into the

trial. Our case law has recognized the principle of evidence called "opening the door," which provides "one who induces a trial court to let down the bars to a field of inquiry that is not competent or relevant to the issues cannot complain if his adversary is also allowed to avail himself of the opening." *State v. Parker*, 747 N.W.2d 196, 206 (Iowa 2008) (citations omitted). If Harris's testimony is inadmissible as Johnson claims, Johnson cannot now claim the State should have been precluded from permitting Harris to explain the apparent inconsistency between Harris's deposition and trial testimony that defense counsel illuminated.

We also find Johnson suffered no prejudice when Harris affirmatively answered the prosecutor's question asking if Harris held an opinion that Johnson "did intend to kill his wife." The prosecutor withdrew the question and the court admonished the jury to disregard both the question and the answer. We presume the jury followed the court's instruction, *State v. Proctor*, 585 N.W.2d 841, 845 (Iowa 1998), and there is no evidence in this case that the jury did not follow the instruction.

In addition, as will be discussed in the next section, the evidence of Johnson's intent to kill Anessa was overwhelming. Anessa was stabbed six times; three of the wounds would have been fatal standing alone. The medical examiner testified that the abrasions on her neck, lack of defensive wounds, and petechiea in her left eye, indicated Anessa had first been strangled into unconsciousness before being stabbed repeatedly. Johnson told a friend multiple times leading up to the murder that "[s]omebody is just going to find [Anessa] dead" and "I'm going to end up in prison." With this evidence, we find Johnson has failed to prove the results of the trial would have been different if

counsel had moved for a mistrial based on the isolated comments by Harris and strength of the State's case. *See State v. Anderson*, 448 N.W.2d 32, 34 (Iowa 1989) (considering the isolated nature of the misconduct and strength of the prosecution's case when determining that the trial court had not abused its discretion in denying a motion for a mistrial).

III. SUFFICIENCY OF THE EVIDENCE.

Next, Johnson claims the evidence at trial was insufficient to prove he killed Anessa with premeditation. Johnson points to the evidence of his extreme remorse and the suicidal statements he made before he was apprehended. He asserts the evidence shows he acted without thought, and the number of stab wounds indicates an act of passion rather than a planned premeditated killing. As he claims the evidence was insufficient to prove he acted with premeditation, Johnson asserts the district court erred in denying his motion for judgment of acquittal.

We review sufficiency-of-the-evidence claims for correction of errors at law, and the verdict is binding on us on appeal if it is supported by substantial evidence. *State v. Isaac*, 756 N.W.2d 817, 819 (Iowa 2008). Evidence is substantial if, when viewed in the light most favorable to the State, it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008). We consider all the evidence and view it in the light most favorable to the State drawing all legitimate inferences in support of the verdict. *State v. Hearn*, 797 N.W.2d 577, 580 (Iowa 2011). Direct and circumstantial evidence is equally probative. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). But the evidence must "raise a

fair inference of guilt as to each essential element of the crime," and must not raise only suspicion, speculation, or conjecture. *State v. Speicher*, 625 N.W.2d 738, 741 (Iowa 2001).

Premeditation is an essential element of the crime of murder in the first degree. *See* Iowa Code § 707.2(1). The jury in this case was instructed that premeditation means "to think or ponder upon a matter before acting." Premeditation does not have to exist for any length of time before acting, and it can be inferred if the person has the opportunity to deliberate and uses a dangerous weapon against another resulting in death. *Hamilton*, 309 N.W.2d at 480. Premeditation and deliberation may be shown by circumstantial evidence in one of three ways: "(1) activity by the defendant to plan the killing, (2) motive based on the relationship between the defendant and the victim, or (3) the nature of the killing, including the use of a deadly weapon combined with an opportunity to deliberate." *State v. Buenaventura*, 660 N.W.2d 38, 48 (Iowa 2003).

In this case, considering the evidence in the light most favorable to the State as we must, we find support for each of three avenues of proving premeditation. Johnson's comments to a friend in the month before the murder indicate Anessa's death and his responsibility for the death were something that Johnson contemplated. The record was replete with evidence of the couple's volatile relationship showing clear animosity between the two. In addition, the medical examiner offered testimony indicating Anessa may have first been strangled to unconsciousness before Johnson stabbed her six times with a knife. The temporal difference between strangling Anessa, obtaining a knife—a deadly weapon, and then stabbing the victim would have given Johnson an opportunity

to deliberate. While we acknowledge there was evidence of Johnson's remorse and the statements he made indicating he was contemplating suicide, this evidence alone is not enough to overcome the circumstantial evidence of premeditation. *See State v. Mitchell*, 450 N.W.2d 828, 832 (Iowa 1990) (holding evidence of suicide attempts is relevant to show the defendant's consciousness of guilt).

We therefore affirm his conviction and sentence for murder in the first degree.

AFFIRMED.